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THE LAW AND THE ELDERLY IN SINGAPORE—THE LAW ON INCOME AND MAINTENANCE FOR THE ELDERLY

LOCKNIE HSU*

To add life to the years that have been added to life.[†]

By 2030, Singapore's elderly will make up a staggering 19% of the population.¹ With such a large proportion of people becoming old, it is timely to pay some attention to the broad spectrum of legal issues surrounding elders. Several sociological and statistical studies have been done on the elderly Singapore, yet relatively little has been written on the law relating to them. Much of the present legislation which directly or indirectly addresses problems of the elderly in Singapore relate to their financial arrangements. Examples of these are provisions relating to withdrawal of Central Provident Fund ("CPF") monies and the age of retirement.²

This article explores selected issues relating to financial support of Singapore's elderly, and highlights some areas in which the law does and can further play an effective role to safeguard their interests. Other equally important issues on housing, succession, divorce, capacity, elder abuse and crimes that impact the elderly are left for discussion elsewhere.

I. WHO ARE THE ELDERLY?

There are various definitions of who are the elderly. However, many discussions treat those over the age of 60 as being elderly or aged.³ Some studies

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† Annex to the United Nations Principles for Older Persons, adopted by the U.N. General Assembly in 1991, Resolution 46/91, adopted at the 74th plenary meeting of the U.N., 16 December 1991; online, United Nations: <<http://www.un.org/esa/socdev/iyop/iyoppop.htm>>.

¹ Report of the Inter-Ministerial Committee on the Ageing Population, 1999 ("IMC Report").

² An exception is the legislation on homes for the aged, which establishes minimum standards for such homes; *Homes for the Aged Act* (Cap. 125A, 1989 Rev. Ed. Sing.). A number of Acts provide for pensions for specific groups of persons, which do not fall within the scope of this article. They include the *Parliamentary Pensions Act* (Cap. 219, 1996 Rev. Ed. Sing.), the *Pensions Act* (Cap. 225, 1985 Rev. Ed. Sing.), the *Civil List and Pension Act* (Cap. 44, 2002 Rev. Ed. Sing.) and the *Widows' and Orphans' Pension Act* (Cap. 350, 1985 Rev. Ed. Sing.).

³ See, for instance, United Nations, *World Population Ageing 1950–2050*, Population Division, Department of Economic and Social Affairs, United Nations, online: <<http://www.un.org/esa/population/publications/worldageing19502050/>>.

divide the elderly by age band, into the “young-old” and the “old-old”.⁴ Even among the elderly, there are different sub-categories. For instance, the elderly can be divided into those who are married and those who are not; those who have children and those who do not; those who are on public assistance and those who are not; and those who are in need of residential care, and those who are not.

From a sociological point of view, this need to differentiate between differing groups of elderly has been recognized.⁵ The question is whether the law should equally recognize such differences. At present, most legislation does not.⁶

The law relating to retirement, for instance, is an example that does not expressly deal with such differences among the elderly. The elderly person may or may not need to have a job past 60; the law extends the minimum retirement age beyond 60 for all anyway. The law has not yet been fine-tuned to cater to varying needs of different sub-categories of elderly. To do so, these needs have to be first identified.

II. RETIREMENT AGE AND INCOME

Retirement directly affects the income of the elderly. With life expectancy in Singapore being an impressive 77 years—among the highest in the world—people will need to work longer in order to support themselves.⁷ A higher retirement age allows Singaporean elderly to support themselves and to be self-sufficient economically for a longer period of time. The retired worker may turn to other sources of finance, such as insurance payments, pensions,

⁴ See, for instance, Ang Seow Long & Edmond Lee, “The Old–Old in Singapore”, Social Statistics Section, Singapore Department of Statistics, July 2000, where the “old–old” were those of 85 years of age and above; online, Singapore Department of Statistics, <<http://www.singstat.gov.sg/ssn/feat/3Q2000/pg10-14.pdf>> . See also Chan, *infra* note 5 at 1.

⁵ Angelique Chan, “Singapore’s Changing Structure and the Policy Implications for Financial Security, Employment, Living Arrangements and Health Care”, Asian Meta-Centre Research Paper Series No. 3, October 2001, online: Asian Meta Centre, <<http://www.populationasia.org/AMCRPno.3.pdf>>, at 9, who points out that “... during the period of old age, the economic status of the elderly can change.” She refers to different sub-groups of elderly, for instance, the widowed and those who retire early. Of such sub-groups, she states: “... blanket policies that refer to the elderly in general will be of limited success unless target populations are identified and their concerns identified.” Similarly, changes in health status occur in old age: see Chan, at 18.

⁶ The *Women’s Charter* (Cap. 353, 1997 Rev. Ed. Sing.), deals with family law issues of marriage, divorce and maintenance, and more recently, protection of elderly family members against violence (see Part VIA of the Charter). However, it is not intended to specifically address the many differing needs of different types of elderly persons.

⁷ See information for 1995–2000 from the Singapore Department of Statistics, online: <<http://www.singstat.gov.sg/papers/snippets/life.html>> .

compulsory savings accumulated under the Central Provident Fund system and help from family members, if any. As these sources may not be adequate, the delaying of retirement gives the elderly worker a welcome source of income for as long as he is able to work.

In 1993, a first step was taken in this direction, with the passing of the *Retirement Age Act*. The Act established the minimum retirement age at 60, or such age up to 67 as the Minister for Labour may prescribe. The age has since been raised to 62.⁸ The Act provides for the protection of persons falling within its scope from wrongful dismissal by reason of age. This does not, however, mean that an employee cannot be dismissed on other grounds, such as bad performance or misconduct.⁹

The law is gender-neutral on its face, as its provisions do not differentiate between male and female employees. This may, however, turn out to be disadvantageous to females in effect, as females are expected to live longer (and therefore may need to work longer) than men.¹⁰ The fact that females are outliving males is a worldwide phenomenon¹¹ and needs to be taken into account in providing financial security for older female persons.

An employer who violates the minimum retirement age requirement may not only be fined up to S\$5,000 or be imprisoned for up to six months (or both), he may have to reinstate or compensate an employee who has been

⁸ The *Retirement Age Act* (Cap. 274A, 2000 Rev. Ed. Sing.). The Act came into operation on 1 July 1993, vide GN. S. 192/93. The Notification came into effect on the same date. The minimum retirement age was raised to 62 by the *Retirement Age (Prescribed Retirement Age) Regulation* (2001 Rev. Ed. Sing.), r. 1, with effect from 1 January 1999. Prior to the Act, the retirement age norm was 55 years. For members of the public service who receive pensions, reference should be made also to sections 8 and 9 of the *Pensions Act* (Cap. 225, 1985 Rev. Ed. Sing.), which relate to retirement for such persons.

⁹ The *Employment Act* (Cap. 91, 1996 Rev. Ed. Sing.) provides for various aspects relating to employment contracts. It does not apply to employees exempted from it. For instance, it does not apply to seamen, domestic workers, or persons employed in managerial, executive or confidential positions. It has been confirmed by a Singapore court that, where the employee is covered by the *Employment Act*, the normal right of termination for poor work performance under that Act is not affected by the *Retirement Age Act*: see the decision of Lee Seiu Kin, J.C. (as he then was) in *Noor Mohamed bin Mumtaz Shah v. Apollo Enterprises Ltd (t/a Apollo Hotel Singapore)* [2001] 1 S.L.R. 159, referring to parliamentary statements by the then Minister for Manpower on the Retirement Age Bill. For provisions relating to termination of contracts in the *Employment Act*, see generally sections 9–11 and 14.

¹⁰ See Koh Eng Chuan, “Measuring Old Age Health Expectancy in Singapore”, especially at 5–8, 2000, Census Population Section, Department of Statistics, online: Department of Statistics: <<http://www.singstat.gov.sg/ssn/feat/3Q2000/pg5-9.pdf>>.

¹¹ *Supra* note 3 at Chapter IV, online: United Nations: <<http://www.un.org/esa/population/publications/worldageing19502050/pdf/90chapteriv.pdf>>. The number of childless females also appears to be on the rise in Singapore; see G. Shantakumar, “1990 Singapore Census”, *Asia-Pacific Population Journal*, Vol. 6, No. 3, 67 at 71, online: U.N.E.S.C.A.P., *Demographers' Handbook*, at <<http://www.unescap.org/pop/journal/1991/v06n3dn.pdf>>.

dismissed contrary to the Act.¹² The Act therefore provides employees with a statutorily protected right to work up to the age of at least 62 if they wish. This gives some assurance to elderly employees who may otherwise have no recourse against premature retirement.

However, a number of jobs have been carved out from the ambit of the *Retirement Age Act*.¹³ For employees falling within the exemptions, the minimum retirement age of 62, and the protection offered under the Act does not apply. This list is rather lengthy, which means that a number of Singapore employees will not have the assurance that they will not be dismissed on the ground of age *per se*. For such persons, any such assurance or protection will have to spring from the terms of their employment contracts. Those exempted from the Act include persons employed as medical practitioners or dentists in any hospital under any contract for a fixed term, certain members of the Singapore Police Force, and teaching staff at local tertiary institutions.¹⁴ The then Minister for Manpower explained the exemptions

¹² See sections 4(3) and 8(3) of the *Retirement Age Act*.

¹³ The *Retirement Age (Exemption) Notification* 1993 sets out a list of exempted jobs. Further exemptions were added in 2001. Paragraphs (w) to (z), *infra* note 14, were added in 2001, vide s. 441/2001 and s. 544/2001.

¹⁴ The list of exemptions, including those added in 2001, presently comprises the following:

- (a) a person employed to work on any specific project for a fixed term;
- (b) a person employed as a medical practitioner or dentist in any hospital under any contract for a fixed term;
- (c) a member of the teaching staff of the Nanyang Polytechnic, Nanyang Technological University, National University of Singapore, Ngee Ann Polytechnic, Singapore Polytechnic or Temasek Polytechnic employed under any contract for a fixed term;
- (d) a person employed under any contract, made before 1st July 1993, for a fixed term of 5 years or less and the contract is not renewed upon its expiry after that date;
- (e) a person in any employment approved by the Minister, or such person as he may appoint, where being of a particular age or in a particular age group is a bona fide occupational consideration or requirement for that employment, whether for reason of safety or for any other reason;
- (f) a person, other than a permanent resident of Singapore, working in Singapore by virtue of a work permit issued by the Controller of Work Permits or by virtue of an employment pass or other pass issued by the Controller of Immigration;
- (g) a person employed in any employment for not more than 20 hours per week;
- (h) a student employed under any contract for a temporary term;
- (i) an employee serving any period of apprenticeship;
- (j) an employee on probation for a period not exceeding 2 years or, in any particular case, for such other period as may be approved by the Minister or such person as he may appoint;
- (k) a person who has retired, before 1st July 1993, at the age of 55 years or above and has been re-employed by the same or another employer;
- (l) a person who, on or at any time after 1st January 1997 but before 1st January 1999, has retired at the age of 60 years or above and has been re-employed by the same or another employer;

as follows:

... the Government's objective is to encourage all Singaporeans to continue working for as long as possible. It is the Government's objective to do so. Hence, exemption from the retirement age law will not be granted liberally. *It is meant to provide flexibility for a certain kind of work which*

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- (m) a person who, being a person who is exempted from the Act pursuant to any provision in this Notification, has or has been lawfully retired before or after 1st January 1999 before attaining the age of 62 years, or who has resigned or whose service has been terminated for any reason before or after that date, and who has been re-employed by the same or another employer at the age of 55 years or above;
 - (n) an employee who, before 1st July 1993, is covered by any retirement benefit scheme approved by the Minister, or such person as he may appoint, which provides for retirement on or before the age of 60 years;
 - (o) a public officer in the Police Service (including the Prisons Service and the Narcotics Service) or the Civil Defence Service;
 - (p) a member of the Singapore Police Force appointed under section 10 (2) or (3) of the Police Force Act (Cap. 235);
 - (q) a member of any Auxiliary Police Force created under Part IX of the Police Force Act;
 - (r) a person appointed by the Commercial and Industrial Security Corporation as an officer under section 8 (a) of the Commercial and Industrial Security Corporation Act (Cap. 47);
 - (s) a person enlisted for regular service in the Singapore Armed Forces under the Enlistment Act (Cap. 93);
 - (t) a pensionable public officer in the Administrative Service or Administrative Service (Foreign Service Branch) who is appointed on or after 1st July 1993;
 - (u) a person who—
 - (i) immediately before becoming a permanent resident in Singapore held an employment pass issued by the Controller of Immigration and was employed on a fixed term contract of service; and
 - (ii) immediately after becoming a permanent resident in Singapore continues to be employed by the same employer on the same fixed term contract of service and any renewal thereof;
 - (v) a person who is a temporary employee employed—
 - (i) on a fixed term contract of service which, including any extension of the contract, is not more than 2 years; or
 - (ii) for such other period as may be approved by the Minister, and the temporary employee is not re-employed by the same employer within 6 months of the expiry or termination of his contract of service;
 - (w) a member of a cabin crew employed in the air-transport industry;
 - (x) a pilot who holds any licence issued under paragraph 20 (1) (a) to (k) of the Air Navigation Order (Cap. 6, O 2);
 - (y) a person employed as a public officer in the Economist Service under any contract for a fixed term; and
 - (z) a public officer in the Corrupt Practices Investigation Service (Junior) Scheme of Service or Corrupt Practices Investigation Service (Senior) Scheme of Service.

*may not be suitable for older workers, or for a [sic] certain kind [sic] of jobs which are linked to a specific project.*¹⁵

Interestingly, while debates are in progress elsewhere on the appropriate upper age limit at which driving should be prohibited, driving-related occupations have not been specifically exempted from the Act, even though such flexibility might justifiably be required for such jobs.¹⁶ Also not expressly exempted are jobs requiring keen eyesight (such as for microscopic work) or a certain level of physical strength or agility, although again, age might genuinely be a factor for concern in such jobs, and thus require such flexibility. On the other hand, the reasons for exempting from the Act, fixed-term-contract teaching staff of tertiary institutions and certain officers in the Corrupt Practices Investigation Service, are not clear, when viewed against the Minister's explanation above.

While, to this writer's knowledge, no exact figures have been published, it would appear that a significant number of employees have, from the outset, therefore been excluded from the benefits of the Act by virtue of the exemptions.¹⁷ Some concerns were voiced in Parliament over the exemptions.¹⁸

¹⁵ With respect to paragraph (c), no amendment has been introduced yet to include some newer tertiary institutions. Singapore Parliament Reports System, Session sitting date 12 April 1993, column 66, online: LawNet, <<http://www.lawnet.com.sg>> [emphasis added].

¹⁶ The most recent incident in the United States sparking off the elderly-driver debate occurred in July 2003, when an 86-year old man crashed into and killed several people at a shopper's area in California. See Scott Bowles, "More Older Drivers in Accidents", online: USA Today, 18 July 2003: <http://story.news.yahoo.com/news?tmpl=story&cid=676&ncid=676&e=18&u=/usatoday/20030718/ts_usatoday/5335514>, and Matt Lait & Sharon Bernstein, "Stricter Rules for Elderly Motorists Could be Urged", *Los Angeles Times* (17 July 2003) online: <<http://www.latimes.com/news/custom/showcase/la-me-old17jul17,0,4515271.story>>.

¹⁷ Taking just the exemption in paragraph (c), *supra* note 14: according to the Ministry of Education, approximately 6,300 teaching staff were employed in just the local universities and polytechnics alone in 1999; paper by the Ministry for Manpower, at 6, online: <<http://www4.gov.sg/mom/manpower/manp/pdf/Education.pdf>>.

¹⁸ See speech of Mr. Goh Chee Wee, then Member of Parliament, Boon Lay, Session sitting date 12 April 1993, at columns 37–38, online: LawNet, <<http://www.lawnet.com.sg>>:

Sir, clause 10 of the Bill provides for exemption from the Bill. This means that a company can apply for some of their employees to be exempted from the Bill. I urge the Minister to be cautious in granting such exemptions. If the exemption is granted too liberally, it will defeat the purpose of this Bill. Whether we like it or not, there are still some deep-rooted beliefs of prejudice against the older workers that they are not capable of performing certain duties well. I believe we should not be bound by the conventional notion or prejudice. I suggest that the Ministry scrutinise every application for exemption stringently. I would also like to seek the Minister's assurance that the Labour Ministry would seek the union's views before granting any exemption. In other words, do not just listen to the employer's side of the story, but get the views of the union and employees as well.

The key provision protecting elderly workers is section 4(2): “No employer shall dismiss on the ground of age any employee who is below 60 years of age or the prescribed employment age”. This enactment is an important development.¹⁹ The Act does not permit exclusion or limitation of its provisions through any term of a contract of service or collective agreement. Insofar as such a term attempts to do so, it is void.²⁰

If the life expectancy in Singapore continues to increase, the retirement age of 62 will have to be continually reviewed upwards. The legislation provides for this by stating the minimum contractual retirement age as “60 years, or such other age, up to 67 years, as may be prescribed by the Minister.”²¹ It is quite conceivable that Singaporeans above 62 years age can and still want to work, particularly in view of high living costs; for these Singaporeans, however, there is presently no legal guarantee against age discrimination, until the limit is revised upwards. Indeed, the intention of the Government is to raise the retirement age eventually to 67.²²

A number of amendments were introduced to the Act in 1998, to permit wage reductions where the minimum retirement age prescribed in the Act exceeds 60 years. They apply to employees who attain 60 years on or after 1 January 1999.²³

The amendments appear to give employers a broad discretion in deciding whether and when to reduce wages. The provision gives the employee a right to being given “reasonable notice” in writing of the proposed wage reduction, and a “reasonable opportunity to be heard”. However, if the employee does not agree with the proposed reduction, the solution under section 5(4)

¹⁹ In other jurisdictions, legislation against age discrimination by unfair dismissal and other protection for elderly persons has existed for some time. In the United States, see, for instance, the *Older Americans Act* of 1965, the *Age Discrimination Act* of 1975 and the *Age Discrimination in Employment Act* 1967 of the United States of America, 29 U.S.C. 621 *et seq* (1967); the last is discussed in Brown, *The Rights of Older Persons* (U.S.A., Southern Illinois University Press, 1989) at 8–10. In the United Kingdom, relevant legislation includes the *Employment Rights Act* (U.K.), 1996. In the European Union, a directive providing against discrimination on the basis of age was passed in 2000 pursuant to Article 13 of the E.C. Treaty: framework Directive for equal treatment in employment and occupation, Council Directive 2000/78/EC, Official Journal of the European Communities, L303/16, 27 November 2000. EU member countries such as the United Kingdom have until 2006 to bring their retirement age laws in line with the Directive. For examples of measures in other countries, see *Reforms for an Aging Society*, O.E.C.D., 2000, at 29–30.

²⁰ Section 7 of the Act.

²¹ *Supra* note 8, section 4(1).

²² See section 4(1) and the speeches by the then Minister for Manpower, Singapore Parliament Reports System, Session sitting date 12 April 1993, columns 29–30, and Session sitting date 26 November 1998, column 1690, online: LawNet, <<http://www.lawnet.com.sg>>.

²³ In other words, for employees attaining 60 years of age *before* 1 January 1999, the wage reduction provisions in section 5 do not apply.

is retirement. Further, if the employer has complied with the requirements of section 5(3), the retirement he imposes on the employee under section 5(4) would not technically be an “unlawful dismissal” falling within the review mechanism under section 8 (discussed further below). In particular, section 5(6) protects an employer by providing that, “notwithstanding any law to the contrary”, a notice served under section 5(3) “. . . shall not be regarded as a termination or repudiation of the contract of employment between the employer and the older employee, or as requiring or causing the older employee to retire or resign on the ground of age”.

Do these provisions truly give an older employee a choice?²⁴ It is not clear how the right to be heard leads to a meaningful process if the only option in the situation of disagreement is retirement.²⁵ It is submitted that for the Act to achieve its objective more effectively, section 5(4) should provide two further processes. First, if there is no agreement following the opportunity given to hear the employee, the matter should be sent to compulsory mediation in an attempt to work out a mutually acceptable arrangement. In the mediation, the employee’s reasons for the proposed wage reduction and time for implementation, as well as the affected employee’s needs and possible counter-proposals, can be fully discussed and explored. Only if such mediation fails to yield agreement in a given time-frame should the employee be made to choose whether to retire or be retired.²⁶

It is submitted that introducing this further step will give both the employer and employee a greater opportunity to reach an agreement which is mutually acceptable. It would replace the present either-or approach of wage reduction versus retirement in section 5(4) with flexibility in solutions. It would also prevent employers defeating the purpose of the Act, by forcing retirement through wage reduction, particularly in view of the protective limitation set in section 5(6). In a market where elderly employees will find alternative employment increasingly scarce, the suggestion will facilitate employers and employees working together to preserve jobs wherever possible. As a matter of practice, conciliation and other services are

²⁴ This concern was raised during the Parliamentary debates on the amendments. See speech by Mr. Charles Chong, Member of Parliament, Pasir Ris, Singapore Parliament Reports System, Session sitting date 26 November 1998, column 1675, online: LawNet, <http://www.lawnet.com.sg>.

²⁵ The then Minister for Manpower gave assurances during the Parliamentary debates that the Ministry would investigate any complaints by employees against unfair action. See Singapore Parliament Reports System, Session sitting date 26 November 1998, column 1684, online: LawNet, <<http://www.lawnet.com.sg>>.

²⁶ It may difficult to prevent an employer from going through the motion of mediation for the sake of compliance, but it is submitted that the opportunity to explore the issues in a structured discussion before an independent mediator will hopefully improve both parties’ chances at reaching a *mutually acceptable* arrangement by creating more options, rather than have the only option as retirement.

already available at the Labour Relations Department, Ministry of Manpower.²⁷ The present proposal would merely mean formally incorporating this process into section 5.

The employer may also, under the 1998 amendments, reduce wages of different older workers differently, subject to the following limitations:

Section 5(5)(a)—the reduction shall be based on reasonable factors other than age (including but not limited to the employee's productivity, performance, duties and responsibilities, and the wage system such as the seniority system applicable to the employee) unless age is a bona fide occupational qualification reasonably necessary to the ordinary performance of the older employee's job; and

(b)—no employer may reduce the wages of any of his older employees by an aggregate amount which exceeds 10% of the wages paid or payable to the employee when that employee attains or attained 60 years of age.

As a further way to reinforce the objectives of the Act, it is suggested that the factors mentioned in section 5(5)(a) above be introduced to apply as a limitation on the employer's power to reduce wages under section 5(3). This will, again, protect employees against the wage reduction provision from being used to circumvent the aim of the Act, *i.e.*, protect against premature retirement based on the ground of age alone, as spelt out in section 4(2).

A further observation is that while the amendments permit employers to reduce wages of older workers, it does not oblige employers to restore the lost wages if the employees improve their work performance, upgrade their work skills, and/or take on more duties and responsibilities. The law also does not place a cap on the time or frequency at which an employer may initiate a wage reduction exercise for an older employee. Instead, reliance is placed on an "understanding" between the Government, employers and employees for employers not to apply such wage reductions in a haphazard manner but, rather, for a reasonable period of, say, a year or two years.²⁸ The key appears to lie in the requirement that the employer must give "reasonable notice" of his intention to reduce wages.²⁹

What can the employee do where he is of the view that the employer has improperly applied section 5 to retire him or cause him to retire? Section 8 permits an employee to make representations to the Minister if he is of the view that he has been "unlawfully dismissed on the ground of age". Section 2(2) in turn explains that *dismissal includes being retired by an employer or being required or caused by an employer to retire or resign.*

²⁷ *Ibid.*

²⁸ See speech by the then Minister for Manpower, Singapore Parliament Reports System, Session sitting date 26 November 1998, column 1685.

²⁹ Section 5(3) of the Act.

In other words, if an employee is of the view that he has been improperly made to retire under section 5(4), he should be able to avail himself of the procedure in section 8. This is an important avenue for an employee to seek redress. However, section 5(6) (as mentioned above) should be noted as it limits an older employee's ability to argue unlawful retirement/dismissal by the service of a notice under section 5(3).

If the Minister finds that there has been an unlawful dismissal, he may direct reinstatement of the employee with payment of what he would have been paid had he not been so dismissed. Alternatively, he may direct the employer to pay such amount of wages as the Minister considers "just and equitable having regard to all the circumstances of the case". Factors to be taken into account in determining such amounts are given in section 8(4), and these include those relating to the past and future of the employee.³⁰

A limitation imposed on the review process is that the decision of the Minister is final, and "shall not be called in question in any court."³¹ Another limitation is that a direction by the Minister mentioned above will act as a bar to any action in court by the employee for damages in respect of unlawful dismissal on the ground of age. The Minister's direction should thus take these two limitations into account, and ensure that any payment ordered is adequate as compensation, for the employee will have no further legal recourse against the employer thereafter. As there is no appeal from the Minister's decision, it is also crucial that the evaluation be based on clear, objective criteria for evaluating the employee's claim.

It is a pity that the Act forbids any challenge to the Minister's direction in a court of law. Apart from not giving aggrieved employees a means of appeal, it prevents development of a body of case law on unlawful dismissal/retirement on the ground of age that is available as a matter of public record. Such development would serve to educate both employers and employees on their rights and obligations, given that there is an increasing population of persons covered by this retirement law. It could also contribute toward ensuring consistency and transparency in the granting of remedies under section 8.

³⁰ The Minister is to have regard in particular to the following:

- (a) the loss sustained by the employee in consequence of the unlawful dismissal;
- (b) the prospects of the employee in obtaining alternative employment;
- (c) the steps taken by the employee to mitigate his loss;
- (d) the period the employee has served with the employer; and
- (e) the age of the employee.

³¹ Section 8(5) of the Act. A similar provision is found in the *Employment Act*, *supra* note 9, section 14(5).

III. CENTRAL PROVIDENT FUND SAVINGS AND SPOUSAL RIGHTS

The CPF system was set up in 1955, with a view to mandatory savings for persons other than the self-employed. This system has ensured that Singapore employees put aside a percentage of their monthly salary, together with a contribution from their employers, to form a pool of funds which will be returned to the employees at the age of 55. The scheme has resulted in Singapore having a very high savings rate.³²

CPF members have different accounts for their CPF funds: the Ordinary Account ("OA"), Special Account ("SA") and Medisave Account. Originally conceived as a retirement scheme, the use of CPF funds has gradually been liberalized. The use of the funds in the SA has been the subject of such liberalization. Today, while CPF savings are still intended to be retirement funds, such savings can also be used for the purchase of property, home protection, education, financial investments and medical expenses.³³ The liberalization of use of CPF monies has meant that CPF members do not have to wait until retirement before they can invest their funds; they are in fact encouraged to make such investments in order to build up their retirement funds.³⁴

CPF savings are also channeled toward maintaining the Medisave and MediShield schemes. Medisave is a medical insurance scheme while MediShield is a national catastrophic medical insurance scheme covering treatment of long or serious illnesses, and MediShield Plus, its more expensive variation which carries higher coverage. In addition, MediShield for the Elderly was introduced in 2000, to provide MediShield coverage for elderly persons aged between 61 and 69 not otherwise covered by MediShield or any Medisave-approved insurance schemes as at 31 December 2000.³⁵

³² It is said the Singapore has the highest savings rate in the world: Mukul G. Asher, "Compulsory Savings in Singapore: An Alternative to the Welfare State", National Centre for Policy Analysis Policy Report No. 198, September 1995, online, <<http://www.ncpa.org/studies/s198/s198.html>>.

³³ For a chronology of developments in CPF uses, see Edward Ng, "Central Provident Fund in Singapore—A Capital Market Boost or A Drag?", Appendix 1, online: <http://www.adb.org/Documents/Books/Rising_to_the_Challenge/Sound_Practices/sing-cpf.pdf>.

³⁴ Distinct accounts within the CPF exist, and these are the Ordinary, Special and Medisave accounts. To further encourage employees to save for their old age, the Supplementary Retirement Scheme (SRS) was established in 2001. This is a voluntary scheme with tax benefits acting as the incentive for saving.

³⁵ CPF Board Annual Report 2001, online: Central Provident Board, <http://www.cpf.gov.sg/cpf_info/Cor_info/AR2001.pdf>. The Government encouraged such elderly persons to sign up for the scheme by offering to bear two years of MediShield premiums (for their age group) for them.

At present, upon reaching 55, members may withdraw the first \$5,000 in their CPF accounts, and 50% of savings in their OA and SA.³⁶ Although CPF members are required to set aside a mandatory Minimum Sum³⁷ in their CPF and Medisave accounts, they may presently make such withdrawals even if the cash component of their Minimum Sum is less than S\$40,000.

On 28 August 2003, significant changes to the CPF system were announced. These will affect Singaporeans reaching 55 in 2013 and beyond most significantly. The full implications of these changes on the ageing population will have to be examined elsewhere. For present purposes, it should be noted that these will directly impact the financial ability of Singaporeans reaching 55 in the next 10 years. Such changes include the raising of the CPF Minimum Sum from the present S\$80,000 to S\$120,000, and new limitations on withdrawals applying to those reaching age 55 from 1 January 2009.³⁸

ElderShield, which was introduced in June 2002, covers those aged between 40 and 69 against severe disability that occurs.³⁹ Concomitantly, for those over 70 at the inception of the ElderShield scheme, they will be automatically covered under the Interim Disability Assistance Programme for the Elderly (IDAPE) scheme.⁴⁰

It is not within the scope of this article to embark on a full analysis of the CPF system, or the legal issues surrounding distribution of CPF and other savings in the context of divorce between elderly persons. However, one issue of interest here is that relating to the right (or lack of it) of a spouse to the Minimum Sum of the other upon the latter's death.⁴¹ This has direct impact on a surviving elderly spouse's access to funds. This particular issue

³⁶ In some exceptional cases, withdrawal prior to age 55 may be permitted; see section 15(2)(d) and (e) of the *CPF Act*.

³⁷ This is a sum which is to be set aside partly in cash, with the rest permitted to be pledged with a property. The CPF sum was set at S\$70,000 in July 2001 and will be raised to S\$80,000 by 2003; see section 15(6) of the *Central Provident Fund Act* (Cap. 36, 2001 Rev. Ed. Sing.) [*CPF Act*]. The CPF Minimum Sum may be left with the CPF Board in a Retirement Account, or used to buy an approved annuity from an insurer, or deposit it with approved banks. The current rate of interest paid for funds left in the CPF Retirement Account is 4%: *CPF Act*, section 15(6C).

³⁸ See Prime Minister's Ministerial Statement, 28 August 2003, available at: <<http://app.sprinter.gov.sg/data/pr/20030828-PMO.pdf>>. The existing 50% withdrawal right will be phased out. Those reaching 55 in 2013 will no longer be permitted to withdraw *any* funds from their OA or SA *unless* they have fulfilled the CPF and Medisave Minimum Sums; see paras. 87–95 and Table 9 of the Ministerial Statement for the phase-out.

³⁹ Unless such persons took the step of opting out of the scheme during the stipulated period, they would be covered by the scheme.

⁴⁰ See Ministry of Health information, online: at <<http://app.moh.gov.sg/you/you06.asp>> and <<http://app.moh.gov.sg/faq/faq0104.asp#faq0104>>.

⁴¹ This article also does not examine the question of whether a surviving spouse should be able to apply for money from *the rest of a deceased spouse's CPF savings, other than the Minimum Sum*.

came under scrutiny during a debate on a 1994 amendment to the *CPF Act*. The amendment included, *inter alia*, permitting a married couple to set up a joint account for the Minimum Sum, and to maintain only 1 1/2 times the normal Minimum Sum for individuals, in such a joint account. The prerequisite for this reduced amount is that the husband and wife must both irrevocably nominate each other as beneficiary.⁴²

During the Parliamentary debate over this amendment, a suggestion was made by then Nominated Member of Parliament, Ms. Kanwaljit Soin, for a surviving spouse to have an automatic right to the deceased spouse's Minimum Sum. This was to ensure that a CPF member would posthumously maintain his elderly surviving spouse, via his CPF savings. This suggestion was rejected.⁴³ As a result, where a CPF member dies, the Minimum Sum continues to be distributed in accordance with the deceased's nomination.⁴⁴ Whether the surviving spouse receives any of such savings would thus depend on whether she has been nominated as a beneficiary. If no nomination is made, funds in the CPF account are distributed by the Public Trustee in accordance with the *Intestate Succession Act*.⁴⁵

The writer can appreciate the reasons for the rejection, as a blanket defeat of a CPF member's nomination *in all cases* might be viewed as being too drastic. However, to provide absolutely no means for a surviving spouse to apply to have the Minimum Sum of his/her deceased spouse can also cause hardship. Consider the case of a surviving wife who has no children, no job and no CPF account. The joint account arrangement does not help such a person. She cannot apply for parental maintenance, being childless. If the deceased spouse left her with no other funds or nominated a third party for his CPF funds, the surviving spouse may be left impecunious. Under the present law, she will not have access to the deceased's Minimum Sum,

⁴² Section 15(6A) and (6B) of the *CPF Act* ["the joint account arrangement"]. It also does not examine whether the Minimum Sum of the *surviving spouse* should, upon death, be made available to non-nominees.

⁴³ See the debate between then Nominated Member of Parliament Ms. Kanwaljit Soin and the then Minister for Manpower, Singapore Parliament Reports System, Session sitting date 25 July 1994, online: LawNet, <<http://www.lawnet.com.sg>>. Ms. Soin gave an example of a male CPF member who names a mistress as nominee of his CPF money, which would leave his wife with no right to the Minimum Sum when he dies—see columns 138–144.

⁴⁴ Section 15(5) of the *CPF Act*.

⁴⁵ Cap. 146, 1985 Rev. Ed. Sing. In addition, section 25(2) of the *CPF Act* states:

If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force.

The practice of the Public Trustee is to pay the money out in accordance with the *Intestate Succession Act*; see Ong, *infra*, note 46, commenting on this practice under the section (previously numbered section 26(2)).

which would have been very helpful to her. She may have to turn to public assistance.

By way of comparison, in the area of inheritance law, a dependant, such as a widow, may apply for “reasonable maintenance” out of the deceased’s estate, where the will, or intestacy law, do not make such reasonable provision for maintenance.⁴⁶ CPF savings fall outside this inheritance law as they do not fall within the estate of the deceased. Instead, they are subject to the nomination rules mentioned above. It is submitted that the need to incorporate a parallel application procedure with respect to the Minimum Sum is compelling.

What is suggested here, therefore, is a modified approach. Introduction of a procedure for a surviving spouse to apply for the Minimum Sum, and for either a court or an appropriate tribunal to grant such an application where the applicant is shown not to have adequate maintenance after death of the spouse, would enable those who survive to have a means of recourse, just as is the case under the *IFPA*.⁴⁷ It is submitted that this procedure would allow cases of genuine hardship to be dealt with in a more equitable manner, and to ensure that elderly persons may have a means of obtaining maintenance through their deceased spouse’s Minimum Sum savings where the need is proven. It is suggested therefore that only in appropriate cases,⁴⁸ nomination of a person other than the surviving spouse may be overridden or modified in favour of the surviving spouse. If no nomination was made, only in appropriate cases may a spouse apply for a variation of the intestacy arrangements. In all other cases, nominated person(s) would continue to receive CPF money in accordance with the present rules.

In a case involving division of matrimonial assets comprising CPF money under the *Women’s Charter*, the Singapore High Court has ruled that a “real and substantial” proprietary interest may be created by the court over the husband’s CPF money in favour of the wife.⁴⁹ The order in that case was

⁴⁶ See section 3(1) of the *Inheritance (Family Provision) Act* (Cap. 138, 1985 Rev. Ed. Sing.) [*IFPA*]. For a discussion of this legislation, see Debbie Ong Siew Ling, “Family Provision After Death” [1995] 7 S. Ac. L.J. 379.

⁴⁷ See debate, *supra* note 43, column 142, where the then Minister for Manpower drew a distinction between the parental maintenance law and what the Nominated Member of Parliament was suggesting, in that the former was merely an enabling law. It is submitted here that an enabling procedure should similarly be set up in respect of the Minimum Sum.

⁴⁸ In section 3(1) of the *IFPA*, the court may order such “reasonable provision as the court thinks fit” where it is of the opinion that “the disposition of the deceased’s estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make reasonable provision for the maintenance of that dependant”. Also, as a further safeguard, such an order may be made subject to conditions or restrictions. By comparison, in ordering the division of matrimonial assets, section 112 of the *Women’s Charter* permits the court to make the distribution in such proportions as the court thinks is “just and equitable”.

⁴⁹ See *CPF Board v. Lau Eng Mui* [1995] 3 S.L.R. 109 (C.A.) and *Lau Eng Mui v. Lee Chin Kee* [1995] 1 S.L.R. 110.

made in favour of the wife in order to satisfy the distribution of matrimonial assets, and in that case, such assets comprised primarily CPF savings. In the *Lau Eng Mui* case, the Court of Appeal stated as follows:

The CPF moneys of a member are his savings under a compulsory saving scheme as provided in the CPF Act and these savings are *intended for the benefit of the member himself and his family, essentially his spouse, on his retirement*. In the unfortunate event that his marriage breaks down irretrievably and it is found by the court that the moneys in his CPF account have been brought about and accumulated through his effort and that of his spouse, direct or indirect, it is only just that a division of such savings between him and his spouse ought to be made on a fair and equitable basis. That is what s 106 was intended to achieve and that is also what the court seeks to achieve in exercising its power thereunder.⁵⁰

Although derived from a different setting, it is submitted that the words emphasized serve to underscore the function of CPF moneys to a retiree. They show the importance of providing a means of support for his/her spouse upon retirement; *a fortiori* for an elderly spouse. Where circumstances make it appropriate, such as where that spouse has no other means of support and no children, is disabled or in need of long-term professional care, and has no other substantial means of support, the suggested procedure would be very helpful. Further, if the law permits a spouse to have a proprietary interest over the other's CPF money even where the marriage has broken down, *a fortiori* there should be at least a means of recourse for a spouse to apply for the deceased's Minimum Sum (or part of it) where he/she has remained married up to the time of death of the other, and where the Sum would be her primary hope of financial support.

IV. PUBLIC ASSISTANCE

The CPF scheme will generally provide the retired elderly with a source of funds. For the elderly who do not have such funds or any employment, the Ministry of Community Development administers a welfare scheme for the poor. A sum is paid monthly to successful applicants, who also become entitled to free basic medical care at public clinics. The current rates of public assistance are shown in the table below. As the sums received are relatively paltry, they are generally supplemented by gifts and donations from other community organizations.

⁵⁰ *CPF Board v. Lau Eng Mui*, *ibid.*, at 121–2 [emphasis added].

TABLE OF PUBLIC ASSISTANCE RATES, AS AT JULY 2003⁵¹

Household Type	Monthly PA Allowance
1 Person	
1 Adult	\$260
1 Child	\$260
2 Persons	
2 Adults	\$445
1 Adult, 1 Child	\$535
2 Children	\$535
3 Persons	
3 Adults	\$510
2 Adults, 1 Child	\$600
1 Adult, 2 Children	\$675
3 Children	\$675
4 Persons	
4 Adults	\$590
3 Adults, 1 Child	\$680
2 Adults, 2 Children	\$755
1 Adult, 3 Children	\$825
4 Children	\$825
5 Persons and above	\$825 (Maximum)

Compare these with the rates applicable ten years ago:⁵²

TABLE OF PUBLIC ASSISTANCE RATES, AS AT 1 JANUARY 1993

Household Type	Monthly PA Allowance
1 Person	
1 Adult	\$150
2 Persons	
2 Adults	\$230
1 Adult, 1 Child	\$280
3 Persons	
3 Adults	\$290
2 Adults, 1 Child	\$340
1 Adult, 2 Children	\$375
4 Persons	
2 Adults, 2 Children	\$405
1 Adult, 3 Children	\$430

⁵¹ Source: Ministry of Community Development and Sports, online, accessed July 2003, at: <http://www.mcds.gov.sg/web/comm_helpneedy_livingexpenses.asp?szMod=comm&szSubMod=livingexpenses#1>.

⁵² *The Straits Times* (24 December 1992) at 12.

V. MAINTENANCE OF PARENTS ACT

In 1996, a bold step was taken in the enactment of the *Maintenance of Parents Act*.⁵³ This Act met some criticism because some viewed its *raison d'être* as running counter to the family value of filial piety encouraged by the Government.⁵⁴ The legislation originated from a private member's Bill in 1994. At the third reading of the Bill after submission to a Select Committee, the private member who mooted the law stated:

Let me say once again, so that I am not misunderstood, that I do not think that this will solve the problem of parents who are not maintained because the law is not a panacea. But with this in place, with education in place, and with the continuing emphasis that we have placed on preservation of the family and family values, I have every confidence that we may be able to preserve family as the basic building block of our society. It is my sincere hope that nobody has to make recourse to the Tribunal, but if that is required, at least, the mechanism is there.⁵⁵

The Act has indeed opened the way for any person "domiciled and resident in Singapore" who is 60 years of age and above, and "unable to maintain himself adequately" to apply for maintenance from one or more of his children. Where an elderly person is being cared for by a person or institution, the latter may also make an application on his behalf. The maintenance may take the form of monthly payments, some other periodical payment or a lump sum. A Tribunal was established for the purposes of hearing applications. Maintenance orders made in favour of a parent may be enforced through the Family Court.⁵⁶

In June 1996 when the Act first came into force, 74 applications were handled by the Tribunal.⁵⁷ By 2001, over 700 cases had been handled under this Act.⁵⁸

Several difficult social issues surrounded this legislation. For instance, questions asked included whether it could realistically be expected that such

⁵³ Cap. 167B, 1996 Rev. Ed. Sing. The Act came into force on 1 June 1996, *vide* s. 248/1996.

⁵⁴ See the extensive debates on the Bill, Singapore Parliament Reports System, Session sitting dates 25–27 July 1994, online: LawNet, <<http://www.lawnet.com.sg>>.

⁵⁵ See speech by then Nominated Member of Parliament, Assoc Prof Walter Woon, Singapore Parliament Reports System, Session sitting date 2 November 1995, column 213, online: LawNet, <<http://www.lawnet.com.sg>>.

⁵⁶ Section 10, *Maintenance of Parents Act*. The Family Court is a part of the Subordinate Courts system.

⁵⁷ See speech by the then Minister for Community Development and Sports, Singapore Parliament Reports System, Session sitting date 1 October 1996, column 563, online: LawNet, <<http://www.lawnet.com.sg>>.

⁵⁸ K.C. Vijayan, "Indian Parents more likely to seek legal help for support", *The Straits Times* (24 October 2003).

legislation would be appropriate to provide for the financial needs of the elderly in Singapore. Another difficult issue was whether children should be required in all circumstances to maintain their parents. With respect to the latter question, the Act includes an exemption where the child shows that he or she was abandoned, abused or neglected by the parent in the past.⁵⁹ It is therefore not an absolute obligation. Orders made may be appealed to the High Court of Singapore. Payments made to parents under the *Maintenance of Parents Act* are not subject to income tax.⁶⁰

VI. CONCLUSION

There are now therefore various legislative measures which seek to increase the chances for the elderly to have adequate means of financial support. The *Retirement Age Act* safeguards, directed at the employment opportunities of the elderly, are a partial solution. It is partial for several reasons. First, the Act does not assist those elderly who are exempted from its protective provisions. Secondly, it is of relevance where the elderly person is physically and mentally capable of working. For those who are not, the Act does not help them. For these persons, the *Maintenance of Parents Act* may have to be the fallback if they have children. However, for those who have no children, the solution will probably be to rely on public assistance, discussed above. It is necessary to look holistically at the financial means of an elderly person, to ensure that as many as possible will have a means of recourse to support, before he or she is driven to rely on public assistance. More can be done in this respect.

In addition to financial issues, many other important aspects of elder well-being are in need of examination. An example of what is not covered here is the issue of workplace support for caregivers who look after elderly parents. Sociological studies have been done on several aspects of such caregiving in Singapore, yet the role of the law in this area has hardly been discussed.⁶¹ Another area is that of crime committed against the elderly,

⁵⁹ Section 5(3) of the *Maintenance of Parents Act*.

⁶⁰ *Income Tax Act* (Cap. 134, 2001 Rev. Ed. Sing.), section 10(8). Some debate accompanied the introduction of the amendment exempting such payments from taxability; see Singapore Parliament Reports System, Session sitting date 27 August 1996, columns 515–7, online: LawNet, <<http://www.lawnet.com.sg>>. In the context of the *Women's Charter*, an interesting case is that of *Sim Mui Beng Nancy v. Tan Peng Huat Steven* [2002] 3 S.L.R. 70, where the relatively advanced age of the husband (he was in his 50s) and his dependence on his share of matrimonial assets were taken into account in the division of matrimonial assets.

⁶¹ See, for instance, Theresa W. Devasahayam, "Organisations that Care: The Necessity for an Eldercare Leave Scheme for Caregivers of the Elderly in Singapore", Asian MetaCentre Research Paper Series, No. 10, January 2003, online, Asian MetaCentre: <<http://www.populationasia.org/AMCRPno10.pdf>>.

which appears to be on the rise.⁶² Also of interest are the potential consumer law issues which arise when the elderly are confronted with relatively new means of sales such as telemarketing, sales via the Internet and aggressive sales tactics employed on the elderly, such as in banking halls.

Financial care of a parent is clearly not the only form of support needed in practice, and since other forms of support such as accompaniment on medical visits, assisting the parent with organizing his or her daily activities where the need arises, are also important, it is submitted that the law may have to be refined to address sharing of such non-financial support duties among siblings, where there is more than one child.⁶³ The Government strongly advocates family support for the elderly and their ageing in place.⁶⁴ To facilitate achieving this policy objective, workplace and sibling support are issues that require further examination. It is obvious that the distribution of the eldercare burden will be a very difficult task, given that it is seen as a sensitive, private and familial matter and whether and how the law should intervene will remain a matter of debate.

As a significant portion of Singapore's population moves rapidly toward old age, it is crucial that the laws affecting the elderly be reviewed in a holistic fashion. In some areas, there may be no legislation. In others, existing legislation may need to be refined and adjusted to meet changing needs both of the elderly and those who interact with them. The law in Singapore already furnishes some protection to help the elderly keep themselves financially independent. It is necessary to continually identify other areas in which needs and problems exist. International initiatives such as the United Nations 1982 International Plan of Action on Ageing and the 2002 Madrid International Plan of Action on Ageing contain a number of important recommendations worth studying, ranging in subject matter from health and nutrition, housing, protection of elderly consumers, to education opportunities for and by the elderly.⁶⁵

⁶² Robberies committed against the elderly increased by 61.7% in the first half of 2003 as compared with same period the year before: Tanya Fong, "Ah Por, This Is How You Can Fight Crime", online, *The Straits Times*: <<http://straitstimes.asia1.com.sg/singapore/story/0,4386,201388,00.html>> .

⁶³ Already, in one case brought under the Maintenance of Parents Act, siblings were ordered to provide board and lodging for their elderly mother on a rotational basis. See Lin Seng Jin, "4 siblings ordered to help care for aged mother", *The Straits Times* (11 September 1997).

⁶⁴ "Ageing in place" is a well-known concept in elder literature. The IMC Report explains it as follows: "Ageing in place means growing old in the home and community that one is familiar with, amidst family and community support." *Supra* note 1 at 57. The IMC has recommended ageing in place as "the key principle in housing and land use policies" in Singapore.

⁶⁵ See <<http://www.un.org/esa/socdev/ageing/ageipaa3.htm>> and <<http://www.un.org/esa/socdev/ageing/waa/a-conf-197-9b.htm>> respectively. See also the United Nations Principles for Older Persons, adopted by the U.N. General Assembly in 1991, Resolution 46/91

A truly progressive society should not be judged merely by how well it is able to generate economic wealth. The ability to successfully integrate social and economic policy to produce a system that adequately addresses elder issues should also be a marker in future, for failure to do this will mean an incomplete development of the society. It is therefore timely to look at these issues now, to lay the foundation for the elderly of tomorrow.